

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**Division of Community Affairs****HOME Investment Partnership Program**

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**Summaries of and Responses to Public Comments on the Proposed
Amendments to Regulations for the HOME Investment Partnerships Program**

California Code of Regulations, Title 25, Division 1, Chapter 7, Subchapter 19

On October 3, 2003, the Department of Housing and Community Development (hereinafter "HCD" or "Department") released for public comment proposed regulations governing the state's HOME Investment Partnerships Program (HOME).

Comments were received during the public comment period, which was October 3, 2003, through November 18, 2003. A Public hearing was held in Sacramento (November 18, 2003). The Department received verbal comments at the public hearing or comments in writing from the following commenters:

1. Paula Mushrush, Redevelopment & Housing Coordinator, Humboldt County, 520 E Street, Eureka, CA 95501
2. Nick Gann, Home Administrator, P.O. Box 1610, Oakhurst, CA 93644
3. Greg Sparks, Executive Director, Rural California Housing Corporation, 3120 Freeboard Drive, Suite 202, West Sacramento, CA 95691
4. Bob Humel, Housing and Property Manager, City of Monterey, City Hall, Monterey, CA 93940
5. Sean P. Quinn, Director, City of Fairfield, Dept. of Planning and Development, 1000 Webster Street, Fairfield, CA 94533-4883
6. Peter N. Carey, President/CEO, Self-Help Enterprises, P.O. Box 6520, Visalia, CA, 93290, 559-651-1000
7. Shannon Nash, Senior Planner, City of Simi Valley, 2929 Tapo canyon road, Simi-Valley, CA 93063-2199
8. John Mealy, Executive Director, Coachella Valley Housing Coalition, 45-701 Monroe Street, Suit G, Plaza 1, Indio, CA 92201

Following are the summaries of and responses to public comments regarding the proposed regulations:

Section 8201(a) and Section 8212(c)

Comment: Disagrees that a jurisdiction's reliance on an administrative contractor is a "problem" or just for "Buying Experience".

Commenters: 2, 3, and 6

Response: No change is proposed in response to this comment.

Discussion: HCD acknowledges that an Administrative Subcontractor is an important and necessary partner in the implementation of HOME activities. The changes in this section were made to allow the jurisdictions the opportunity to gain the administrative experience or to utilize an administrative subcontractor based on meeting their specific needs and not just to be competitive in the HOME program.

Section 8201(l)

Comment: **Commenter numbers: 3 and 6** request HCD to expand the first time homebuyer (FTHB) definition to include other low income homebuyers with special circumstances such as being displaced by natural disasters or for employment opportunity.

Response: This comment is outside the scope of the proposed amendments to the HOME regulations. No change is proposed in response to this comment.

Discussion: HCD will consider this comment in proposed regulatory changes in the future.

Section 8201(m), 8205(a)(1) and 8204(1)(2)(d)

Commenters 2, 3, and 6

Comment 1: Allow Community Housing Development Organizations (CHDO) to apply for a FTHB Program. **Commenter numbers 3 and 6** suggests that a provision be made for single family infill programs where they may acquire parcels of land, subdivide and construct single family homes that are sold to low-income homebuyers. Also noted, is that a CHDO is the sole owner/developer of the projects; therefore, the program model is appropriate for CHDOs even without the identification of specific parcels at the time of application.

Response: Sections 8201(m) and 8205(a) are being revised to indicate that a CHDO may apply for a FTHB program for single family infill as follows: "means HOME funds are provided to a city, county or CHDO to administer a program to assist first-time

homebuyers. Eligible uses of these funds consist of: 1) a city or county providing...2) a city, county or CHDO providing assistance for the construction of scattered site dwellings..."

Discussion: HCD acknowledges that it may be possible for CHDO to be a sole owner or developer in a FTHB program proposing to construct housing on infill sites; therefore, we have revised the proposed text to include language that allows CHDO's to apply for a FTHB program where the use will be infill new construction. Note: to operate a FTHB mortgage assistance program would be an ineligible use of funds for a CHDO.

Section 8201(m) and 8205(a)(1)

Comment 2: Commenter numbers 3, 5, and 6 support allowing completion of \$10,000 rehabilitation in a FTHB program. **Commenter numbers 3 and 6** requests that HCD allow an increase in delivery assistance to cover increased costs of the rehabilitation. **Commenter number 2** states that allowing up to \$10,000 for rehabilitation of a house prior to purchase may create potential problems and violate federal regulations by providing assistance to an over income homeowner, violating federal guidelines in the following ways:

- We may be providing assistance to an over income homeowner.
- We would violate federal guidelines that say we cannot sell a home that does not meet the building code.
- Seller would need to repay \$10,000 or would the City or County foreclose, if the sale transaction was not completed.

Commenter numbers: 2, 3, 5, and 6

Response: Thank you for your support. The costs of delivering an activity are part of the administrative expenses allowed under activity costs and HCD will provide for an increase to cover these costs. These subsections have been revised to require the rehabilitation work to be completed after transfer of ownership interest and in compliance with 24 CFR 92.251(b).

Discussion: The intent of this section is to allow some minor rehabilitation to be completed with the FTHB Acquisition transaction. HCD agrees that that the costs of activity delivery will be raised with the rehabilitation; therefore, the program will provide an increase to activity delivery amount as identified in the Notice of Funding Availability (NOFA). HCD also believes there may be potential risks if the repairs were completed prior to transfer of ownership; therefore, we are requiring the rehabilitation to be completed after transfer of ownership interest. HOME Final Rule 92.251b(2) requires health and safety defects to be completed prior to occupancy and within six months of the transfer of ownership interest. 92.251b(3) requires that the housing meet property standards within two years after transfer of ownership interest.

Section 8201(m) and 8205(a)(1)

Comment 3: Commenter number 2 is concerned that providing federal assistance to for-profit builders to build on scattered in-fill lots is a risk if the property does not sell and may require foreclosing on the property. In addition, to allow building more than one individually owned house on a lot is illegal.

Response: No change is being made in response to the first half of this comment; however, 8201(m) is being revised to replace the use of the word “lots” with “site/s”.

Discussion: HCD agrees we are always at risk in providing funds for the new construction of homes in a program; however, we believe that infill development is important and that the FTHB program is an appropriate activity for these individual homes to be built. We are relying on the State Recipient and CHDO to use their discretion when providing these funds. The term “lots” was inappropriately used and is being replaced with the more correct term “site/s”.

Section 8201(n) and 8205(a)(7)

Comment: Commenter number 6 supports the requirement that the entire HOME investment in a FTHB subdivision project must be converted to mortgage assistance to the first-time homebuyers. However, the commenter believes HCD’s restrictive method of calculating maximum subsidy makes it impossible to convert the entire HOME investment to mortgage assistance. Simplify Activity Name.

Response: Thank you for the support. No change is being made in response to the restrictive method of calculating the maximum subsidy. This subsection is being revised to simplify the activity name and eliminate the descriptor “subdivision”. The new activity name will be simply “FTHB project”.

Discussion: HCD has not established ratios at this time or requirements about how homeownership loan amounts are calculated to determine the maximum subsidy. We require that you document that the subsidy provided is the correct amount. In addition, 24 CFR 92.250 (b) requires that projects are evaluated in accordance to guidelines that have been adopted for this purpose. HCD has published a best practice Homebuyer Program Guidelines found at <http://www.hcd.ca.gov/ca/SmplHmByrGuid.doc> that is available for technical assistance. The revision to change the name was prompted by internal HCD discussion rather than public comment.

Section 8201(x) and 8205(a)(6)

Comment: Simplify activity name.

Response: These subsections are being revised to change the activity name to “rental rehabilitation and/or acquisition project”. This revision was prompted by internal HCD discussion rather than public comment.

Section 8201(z) and 8205(a)(2)

Comment: Simplify activity name.

Response: These subsections are being revised to change the activity name to “owner-occupied rehabilitation programs”. This revision was prompted by internal HCD discussion rather than public comment.

Section 8201(aa) and 8205(a)(3)

Comment 1: Commenter number 4 requests that HCD allows “rental acquisition only” projects under the rehabilitation and acquisition of rental housing program. HCD has proposed to simplify the activity name.

Response: These subsections are being revised to allow “rental acquisition only” projects under this activity. The language stating “Activities consisting solely of rental acquisition are not eligible for this activity” is being rescinded. The activity name will be changed to “rental rehabilitation and/or acquisition program” .

Discussion: HCD’s intent of removing “acquisition only” was that it is not compatible with “sole” owner, developer, or management agent; after review, the Department no longer sees a conflict in all cases. The revision to simplify the activity name was prompted by internal HCD discussion rather than public comment.

Section 8201(aa) and 8205(a)(3)

Comment 2: Commenter number 4 is concerned that limiting the use of HOME funds to no more than 40% of the Rehabilitation and Acquisition of Rental Housing Program reduces the opportunity to provide housing to lower income households.

Response: No change is proposed in response to this comment.

Discussion: Projects that require more than 40% of the program funds may be funded by submission of a rental project application during the NOFA process. The major objective to limiting a project under this activity to 40% of the program funds is to allow for HCD oversight in the funding of larger projects to ensure financial feasibility and sustainability of the affordable units, please refer to the Initial Statement of Reasons (ISOR). HCD plans to increase program activity application limits to be identified in the NOFA. In Section 8217(c)(4), HCD has proposed regulation language to allow applicants to apply for a bonus to the activity limits if they meet the conditions identified in the NOFA.

Section 8201(bb) and 8205(a)(5)

Comment: Simplify activity name.

Response: These subsections are being revised to change the activity name to “rental new construction projects”. This revision was prompted by internal HCD discussion rather than public comment.

Section 8204(a)(1)(D)(iii) and (iv) and 8204(a)(2)(C)(ii) and (iii)

Comment: **Commenter numbers 3 and 6** suggest rewording this subsection to clarify that the applicant is to provide a “self” certification.

Response: These subsections are being revised to reflect that a “self certification” will be required.

Discussion: It is HCD intent that the applicant self certifies that they have third party documentation to support their claim. HCD will verify the third party documentation during the monitoring process.

Section 8204(a)(2)(D)(i), (ii), (iii)

Comment: **Commenter number 6** supports the requirement that the CHDO fulfills the role of either sole project developer; sole owner; or sole general partner. **Commenter number 3** requests HCD to allow the role of the CHDO applicant to include provisions for the CHDO to enter into partnerships for the purposes of development and to be the managing general partner in the development. **Commenter number 2** is concerned that the elimination of the sponsor role will reduce the number of applications a CHDO may participate in such as being included in a State Recipient first time homebuyer program and a sponsor for a CHDO rental project.

Commenters: **2, 3, and 6**

Response: Thank you for the support. No change is proposed in response to allowing a CHDO to enter into a partnership.

Discussion: As the Participating Jurisdiction, we believe this requirement to restrict the CHDO’s role to “sole” owner, developer and managing general partner is necessary to ensure effective project control as stated in the ISOR. The proposed regulations do not change the ability of a CHDO to be an administrative subcontractor for a State Recipient FTHB program and submitting a CHDO rental project application, provided the CHDO is acting as owner or developer in the multifamily project. It is the Department’s priority to be funding CHDOs who possess the capacity to act as sole owner, sole developer, or sole general partner. An inexperienced CHDO can continue to receive HOME funds and build capacity by partnering with a State Recipient.

Section 8204.1(b)(3)(E)

Comment: **Commenter number 8** requests HCD to allow the geographic areas to be substantiated through other documentation rather than restricted to the organizations by-laws. The commenter also disagrees with the identification of specific communities in the bylaws as it limits the authority of the organization to work in non-specified communities.

Response: This requirement is being renumbered as a general item under 8204.1(b)(12) and revised to reflect the requirement may be evidenced by the Articles of Incorporation, the Charter or Resolution, or Bylaws. No change is being made to this section in response to the objection of identifying specific communities.

Discussion: HCD agrees that geographic areas may be safely evidenced through other documentation to ensure Board approval of the areas served; therefore, we have revised and moved this section out of the bylaw requirements. HCD does not limit the communities specified in the documentation, just that they state eligible communities for which the organization would like to be certified are included.

Section 8204.1(b)(3)(F)

Comment: **Commenter numbers 3 and 6** suggest minor rewording and that a requirement for disclosure of a conflict of interest may be more appropriate.

Response: This subsection is being revised for minor rewording. No change is proposed in response to this comment.

Discussion: A disclosure of just a conflict of interest is not sufficient. As stated in the ISOR the program is concerned that the CHDO is not controlled, nor directed by individuals, or organizations pursuant 24 CFR 92.2 definition of a Community Housing Development Organization subsection (3).

Section 8204.1(b)(11)

Comment: **Commenter numbers 3 and 6** believes a plan document seems to be an excessive requirement where an existing successful CHDO might be taking on a new activity not previously implemented in the "State HOME Program." Commenters are also concerned that the Department does not specify how they will evaluate the plan or the goal of the requirement. Commenters recommend deletion of business plan in the absence of evaluation criteria.

Response: HCD is deleting proposed subsections 8204.1(b)(11)(IV) and (V) the requirements for a business plan when a CHDO is applying for a new activity or for a new geographical area.

Discussion: HCD agrees that the requirement of the business plan when an existing CHDO is taking on a new activity or working in a new geographic area is excessive. However, we continue to support the requirement for a business plan for organizations that have been formed less than 10 years and are certifying with the State for the first time or it has been longer than 5 years since their last certification with the State has expired. HCD's purpose in requiring the business plan is to ensure that a CHDO has done the necessary research and analysis to know the aspects of their organizations goals and design and the needs of the areas they plan to serve (refer to ISOR). HCD will evaluate the plan for completeness and to ensure that the CHDO has addressed the areas identified in subsection (B).

Section 8204.1(g)

Comment: Commenters disagrees with annual certification or certification at time of funding. **Commenter number 8** suggests that HCD keep the 3 year certification and only require an annual self certification and submission of only changed documents. **Commenter number 6** is concerned that there may be no benefit in requirement of recertification six months after a HOME award and requests clarification of the phrase "following the HOME award."

Commenters: 2, 6 and 8

Response: This subsection is being revised to require CHDO's to submit a self certification confirming certification eligibility with their HOME application and that HCD may require documentation to substantiate certification compliance. This is necessary to meet HUD's requirement for an annual certification as discussed below. Section 8211(c)(3) is modified to include that information in regards to Section "8204.1" shall be submitted in the application.

Discussion: HCD is required by HUD to recertify CHDO's annually or at time of funding pursuant to HOMEfires, Vol. 4 No.1 issued April 2002 and CPD Notice 97-11 issued October 8, 1997. The reasons given are primarily due to changes in board composition and management, and ongoing changes in Charters or By-laws. HCD has tried to provide the least onerous solution by making the requirement a special condition when a CHDO receives an award. However, HCD does agree that a self-certification required with the application of funding is acceptable method to meet the requirement. Language that was unclear or ambiguous has been replaced with the requirement to submit self certification with the HOME application...

Section 8205(a), 8201(m) and 8204(1)(2)(d) – Please refer comments and responses for Section 8201(m)

Section 8205(a)(2) & 8201(z) – Please refer to comment and response in Section 8201(z).

Section 8205(a)(3) & 8201(aa) – Please refer to comments and responses for Section 8201(aa).

Section 8205(a)(5) & 8201(bb) – Please refer to comment and response for Section 8201(bb).

Section 8205(a)(6) & 8201(x) – Please refer to comment and response for Section 8201(x).

Section 8205(a)(7) & 8201(n) – Please refer to comment and response for Section 8201(n).

Section 8205(b)(1)

Comment: Commenter number 2 disagrees with the setting of min/max interest rate for FTHB programs. The commenters believe that the local market should dictate the rates and that a local jurisdiction is better suited to design a program that works in their community.

Response: No change is proposed in response to this comment.

Discussion: HCD agrees that localities are better suited, that's one reason the regulations permit loans bearing a range of interest from 0 – 3 percent. The 3 percent cap is explained in the ISOR under Section 8205, Use of Funds, Subsection 8205(b), and Subsection C.

Section 8205(b)(1)(A) and (B)

Comment: Commenter numbers 3 and 6 notes that this section applies to “Loans to CHDOs...”; however, loans in this section are loans to FTHB not CHDOs. Commenters suggest rewording this section to indicate that (A) applies to awards to CHDO's which are subsequently re-loaned to FTHB with CHDO proceeds. Commenter number 6 suggests rewording to indicate they are loans made by CHDOs who are not approved to make loans from CHDO proceeds.

Response: Subsections 8205(b)(1)(A) and (B) are being revised to clarify that (A) pertains to “Loans financed from the CHDO Set-aside” per 24 CFR 92.300(a)(1) and (B) are provisions for “Loans financed from CHDO proceeds” pursuant to Section 8206.1(c).

Discussion: HCD agrees the two sections were vague and is clarifying the names between the two sections. HCD's intent is that (A) will apply to all CHDO's making loans from set-aside funds received through the NOFA process and (B) applies to only those loans made with CHDO proceeds.

8205(b)(1)(A)(ii)

Comment: Commenter numbers 3 and 6 strongly supports the requirement that loans written by the Department to FTHB shall incorporate forgiveness of interest for years 11 through 20. Commenter number 6 notes that the ISOR states that one reason for this is to reduce debt at the time of retirement; in this case, it may be

appropriate to incorporate a provision for interest reduction and/or forgiveness at retirement.

Response: Thank you for your support. No change is proposed in response to the comment requesting interest reduction and/or forgiveness at retirement.

Discussion: The proposed regulations would enact the existing homeownership loan terms financed from the CHDO set-aside. The Department believes that providing financing in the form of loans is prudent as reflected in our Consolidated Plan. HCD believes the rules for forgiveness on single family loans are sufficient.

Section 8205(b)(1)(A)(iii)

Comment: Commenters 6 and 8 requests HCD to allow a loan to be made at Applicable Federal Rate (AFR) if necessary for Low Income Tax Credit (LITC) projects and allow rental loans to be forgiven the 3% interest the same as single-family projects.

Response: This Subsection is being revised to include the provision for loans to be made at AFR if necessary for LITC projects. No change is proposed in response to allowing forgiveness of interest on rental loans.

Discussion: The proposed regulations would enact the existing rental loan terms financed from the CHDO set-aside. The Department believes that providing financing in the form of loans is prudent as reflected in our Consolidated Plan. The payment of interest on rental projects is covered under Section 8314 of the Uniform Multifamily Regulations.

Section 8205(b)(1)(C)(II)

Comment: Commenter number 1 notes the last sentence should read “all rental rehabilitation project loans shall be amortized unless the debt...”

Response: No change is being made in response to this comment. HCD has reviewed the sentence and has determined that “amortizing” is the correct tense as it denotes present/future or continuous action.

Section 8205(b)(2)

Comment: Commenter numbers 3 and 6 requests HCD to add a provision for grant assistance for unusual site-related costs.

Response: This comment is outside the scope of the proposed amendments to the HOME regulations. No change is proposed in response to this comment.

Discussion: There were no substantive changes proposed to this Section. HCD will consider this comment in proposed regulatory changes in the future.

Section 8205(b)(6)

Comment: **Commenter number 3** requests HCD to delete the paragraph that states if the proposed developer was not to proceed and the project is not completed neither the State Recipient nor CHDO should have to repay the funds.

Response: This comment is outside the scope of the proposed amendments to the HOME regulations. No change is proposed in response to this comment.

Discussion: This is a federal requirement if the associated costs are charged as a project costs (activity delivery) pursuant 92.206(d)(6) and 92.206(F)(2) and the project is not completed, then the funds must be repaid. However, these costs may be charged as administrative costs pursuant to 92.207(b); and, in that case, the State Recipient would not be required to repay the funds. In addition, HCD may waive these expenses if it is determined there were impediments to project development that were reasonably beyond the control of a CHDO pursuant 92.301(a)(3) or (b)(3).

Section 8206.1

Commenter number 2 sees no negative impact caused by this proposed change.

Response: Thank you for your support.

Section 8206.1(a)

Comment: Clarify that it is only “rental” housing that doesn’t comply with affordability requirements for the required period that is required to be repaid.

Response: This section is being revised to indicate that: ...“rental housing” that doesn’t comply with affordability requirements for a required period shall be repaid to the Department.

Discussion: This revision was prompted by HCD discussion rather than public comment to clarify that only rental housing that does not meet the affordability period is repaid to the department. Owner housing that does not meet the affordability period is “recaptured” and may be retained in the local HOME account.

Section 8206.1(b)(1)

Comment: **Commenter number 4** requests HCD to allow high performers to retain program income with recaptured funds deposited in a local account for reuse of local affordable housing programs (e.g. revolving loan account).

Response: No change is proposed in response to this comment.

Discussion: HUD requires that all program income must be used in accordance with the HOME program rules and that program income must be expended before additional HOME funds are drawn down from the U.S. Treasury pursuant to 24 CFR 92.502 and 503.

Section 8206.1(b)(3)

Comment: **Commenter number 4** requests HCD to consider a re-purchase option model that limits price escalation by a fixed benchmark, allow resale for high costs areas, consider value/price of land in high costs areas, and provide resale option to communities, and/or allow resale for limited forms of ownership like community land trust as an option to recapture pursuant HCD Consolidated plan.

Response: This section is being revised to reflect that “exceptions may be requested to allow resale for limited equity forms of ownership like cooperatives and community land trust.

Discussion: HCD has determined that HOME loan assistance must be in the form of recapture loans to utilize a specific provision of federal HOME regulations. This provision allows HCD and State Recipients to forgive that portion of the principal amount necessary to allow the homeowner to preserve their down payment, capital improvements, and amortized principal. The resale method for HOME loans would require full repayment of the HOME loan in all circumstances. State Recipients may impose their own resale agreement if they are providing their own subsidy. For those few cases where the State Recipient is not providing their own subsidy, or where a CHDO prefers a limited equity form of ownership as defined in Section 11003.4 of the Business and Professions Code, these regulations will now allow for the HOME financing to be in the form of a resale agreement.

Section 8206.1(b)(4)

Comment: **Commenter number 4** request HCD to not require submission of quarterly reports on program income. The commenter requests that we modify the reporting requirement to match federal requirements such as CDBG who requires annual reports.

Response: No change is being made to this section in response to the comment.

Discussion: The requirement for quarterly reporting on program income is an agreement between HUD and HCD in lieu of the HOME Program meeting the HUD requirement to report program income in IDIS on a real time basis when it is received and expended. The State CDBG Program also requires quarterly reporting on program income to meet the HUD agreement for IDIS reporting.

Section 8206.1(c)(1)

Comment: **Commenter numbers 3 and 6** requests that HCD to define “all program requirements and deadlines.”

Response: This subsection is being revised to require adherence to program requirements and deadlines in four preceding State HOME contracts including federal overlays, expenditure deadlines, setup deadlines and monitoring pursuant to section 8216 and 8217, and CHDO certification and application requirements identified in Section 8204 and 8204.1.

Discussion: HCD agrees that this section is too general and has made revisions to clarify the requirement.

Section 8206.1(c)(2)

Comment: **Commenter number 6** requests that HCD clarify that the completion of required projects for a CHDO to qualify to retain CHDO proceeds does not have to be HOME-funded.

Response: No change is proposed in response to this comment. Projects do not need to be HOME funded.

Discussion: HCD’s believes the intent is clear that they do not have to be HOME – funded projects as we have not specified that the projects must be “HOME” just that they complete six housing projects with a total of at least 100 units.

Section: 8206.1(c)(5)

Comment: **Commenter number 8** requests HCD to provide a clear and concise definition for “senior staff”. **Commenter number 3** requests that HCD delete the capacity requirement for “three staff with at least three-year tenure or at a minimum, use as a measure the tenure of the board of directors.

Response: HCD is rescinding this subsection and the capacity requirement for three senior staff with at least three-year tenure.

Discussion: HCD agrees that this requirement is difficult to measure or define and may not accurately reflect the capacity of the organization. In addition, HCD believes that the other criteria specified to a CHDO to retain proceeds is sufficient to ensure the capacity of the organization to retain and manage proceeds from the investment of HOME funds.

Section 8206.1(d)

Comment: **Commenter numbers 3 and 6** supports the use of CHDO proceeds.

Response: Thank you for your support.

Discussion: We have set requirements so that once approved we are confident the CHDOs can manage the proceeds for all contracts.

Section 8207(a)(2)

Comment: **Commenter number 2** disagrees with \$5,000 per unit minimum and HCD reason that administrative costs are too high per the loan amount.

Response: This subsection is being rescinded.

Discussion: Thank you for the comment. HCD believes that rescinding the \$5,000 minimum allows for greater flexibility in assisting potential homebuyers and addressing homeowner's different rehabilitation needs.

Section 8207(a)(3)

Comment: **Commenter number 8** would like HCD to provide clearer definition of "layering" that will allow CHDOs to identify the types of financing for its projects and ensure that the Department will not be making changes to individual HOME loans once the mortgage lender has approved the homebuyer's loan.

Response: This comment is outside the scope of the proposed amendments to the HOME regulations. No change is proposed in response to this comment.

Discussion: It is HCD's intention that if the loan from the primary lender doesn't meet our conditions we will want it changed. The Department will review each homebuyer loan to ensure the loan maximizes the conventional assistance. We allow the recipient to set their own ratios and conditions that we will review for reasonableness; however, if there is an issue with the loan e.g. the loan does not meet the recipients criteria HCD may require the loan to be changed.

Section 8207(a)(3)(B)(ii)

Comment: **Commenter numbers 5 and 7** request that the requirement for fully amortized loans be dropped from high cost areas and would like HCD to allow Temporary interest buy downs (they are not adjustable rate mortgages). **Commenter number 5** would like HCD to adopt CalHFA's policy of permitting temporary interest-rate buy-downs if the borrower's back-end debt ratio does not exceed 41%

Response: No change is proposed in response to these comments.

Discussion: HCD supports the requirement for fully amortized loans and no temporary interest rate buy downs for the reasons specified in the ISOR. Adjustable rate

mortgages and temporary interest rate buy downs both have the potential of putting the homeowner in a position of not affording their home loans at a future date and possible need of further assistance or foreclosure. For example, a family of four in Solano County with a typical income for HOME participants has an income of \$50,000 per year. In the commenter's example, the loan payment would have a possible payment increase of \$508 per month in year 11 (12% of the family's income), when the loan had to be refinanced from an interest only loan to a conventional loan. The Department is concerned that the family's income is unpredictable 10 years from now. It could be higher, because of career advancement or cost of living adjustments, but it could also be the same, or lower, due to divorce, job loss, or retirement.

Regarding the commenter's suggestion that the Department adopt the CalHFA's standard, i.e. allowing interest buy-downs if the back-end ratio is below 41%, the Department disagrees with the commenter. The CalHFA program serves families with incomes significantly higher than allowed in the HOME Program. Lower income families cannot afford the worst-case scenarios which occur by allowing interest only loans and interest rate buy-downs. Note also that the State HOME program allows localities to set the maximum down payment loan amount. If the net result of a mandatory amortized loan is that the family can afford a lower primary loan amount, the HOME program's limit can be increased. In Solano County, the HOME limit can be as high as \$152,404 for a four bedroom home.

Section 8207(a)(3)(B)(ii)

Comment: Commenter number 5 would like HCD to allow a policy of requiring the interest rates to be comparable to those currently charged by other lenders in the local community. They identify the following reasons:

- It is difficult in determining what the current effective rate would be – e.g., 2 months old.
- In today's environment of rapidly changing interest rates, the survey does not adequately reflect current market rates.
- Borrower's interest rate can vary depending on the number of points the borrower elects to pay.

Response: HCD has removed the specific index to be used to evaluate whether the proposed interest rate is a reasonable market rate. Instead, the index will be established in the NOFA.

Discussion: HCD agrees with the commenter that the chosen index must reflect current market rates and that the rate limit take into consideration the number of points the borrower elects to pay. HCD still believes that it is important that the interest rate be based on a market rate. Therefore, HCD will research which index or combination of indices is appropriate, and will set the index or combination of indices annually in the NOFA. This will allow the use of more appropriate indices if they should become

available and for the use of regional indexes which may be more accurate for a given region of the State.

Section 8208(a)

Comment: The fund amounts that apply to the first and third category overlap with the second category.

Response: The affordability table is revised to clarify the first category applies to HOME assistance provided “Less than \$15,000 per unit”, the second category to \$15,000 to \$40,000 per unit, and the third applies to “more than \$40,000”. This revision was a result of internal HCD discussion rather than public comment.

Section 8210

Comment: **Commenter number 6** supports concept of allowing multiple NOFAs in one year; however, may not be consistent with HCD’s practice of establishing one award date per year.

Response: Thank you for your support. No change is proposed in response to this comment. HCD agrees that it is inconsistent with our current “practice”; however, if we begin issuing multiple NOFA’s in a year we will change our current practice.

Section 8210(b)

Comment: **Commenter number 8** suggests that separate activities should be submitted on separate applications.

Response: This comment is outside the scope of the proposed amendments to the HOME regulations. No change is proposed in response to this comment.

Discussion: HCD will consider this comment in proposed regulatory changes in the future.

Section 8210(f)

Comment: Please refer to comment in Section 8217(b) on disencumbrance of funds.

Response: This section is revised to remove citation to Section 8217, as disencumbrance of funds is no longer required per 8217.

Section 8211

Comment: **Commenter numbers 3 and 6** request that consideration should be given to dropping the detailed application requirements and incorporating them more specifically into the NOFA. **Commenter number 2** disagrees with the application being

taken out of regulations as an ever-changing application would only cause more applicants to fail.

Commenters: 2, 3, and 6

Response: No change is proposed in response to these comments.

Discussion: HCD is required by the Office of Administrative Law to incorporate any forms/applications required for participation in the program into regulation either by incorporating the form itself or specifying what information is being requested on the form.

HCD understands commenter number 2's concern for consistency in the application format from year to year and that arbitrary changes do not occur; however, the ISOR contains a very comprehensive discussion on why HCD needs the flexibility to make changes to the application "form" that will solicit the information required by these regulations. The basic need is to make annual formatting changes without completing a Section 100 regulatory package outweighs the inconvenience to applicants.

Section 8211(c)(3)

Comment: Please refer to comments on Section 8204.1(g)

Response: This section is revised to add the citation "8204.1" as information that will be requested in the application to determine eligibility. This change is a result of comments on section 8204.1(g) that now is requiring CHDO's to submit self-certification at time of application.

Section 8211(c)(4)

Comment: Please refer to comments on Section 8201(m)

Response: This section is revised to add the citation "8210(c)" as information that will be requested in the application to determine activity eligibility.

Discussion: This change is a result of comments on section 8201(m) that now allows CHDO's to apply for a FTHB Program. Section 8210(c) defines activities that a CHDO may apply for while CHDO's are eligible to complete infill projects they may not complete a FTHB Program for solely mortgage assistance..

Section 8211(d)(5)

Comment: Commenter numbers 3 and 6 requests that HCD remove the requirement for program guidelines at time of application; and instead, incorporate checklist for a self certification that the items will be/are included in the guidelines.

Response: No change is proposed in response to this comment.

Discussion: HCD believes the submission of the actual program guidelines are an important tool in judging compliance. HCD has historically provided a reference checklist for application requirements. The checklist is provided as technical assistance to applicants and does not include any requirements not already included in federal or state regulations.

Section 8212

Comment: **Commenter numbers 3 and 6** recommends that the point scoring systems should not be incorporated into these regulations, but in the NOFA as incorporating the scoring in regulations makes it inflexible. **Commenter number 2** requests that the application and the rating and ranking criteria do not change and should remain in regulations as the program is oversubscribed and HCD is able to choose the best of the applications.

Commenters: **2, 3, and 6**

Response: No Change is proposed in response to these comments.

Discussion: HCD agrees that the purpose of the program and its recipients may be better served by specifying the detailed point scores for each section in the NOFA. However, Office of Administrative Law encourages State Agencies to be specific as possible in regulations on the basis that they make determinations. Placing point scoring in the NOFA would not give the public an opportunity to comment on HCD's choices. Again, HCD understands commenter number 2's concern for consistency in the rating and ranking criteria; and therefore, has tried to be more specific in these regulations on the method we use to perform the separate rating and ranking of projects and programs along with making other necessary changes as specified in the ISOR for this section.

Section 8212(a)(2)

Comment: **Commenter number 1** notes that it is unclear as to what HCD is trying to say by "the applicant proposed at least one and not more than two activities and uses of HOME funds which is eligible pursuant to Section 8205"

Response: There is no substantive change to this section; however, this section has been reworded for clarity to read: "the application proposes at least one activity but no more than two activities. The proposed activities and the specific use of funds must be eligible pursuant to Section 8205 and 8210(c)."

Section 8212(a)(4) – Please refer to comment on Section 8217(c)(4).

Section 8212(a)(6)(B)

Comment: Commenter number 6 suggests that Site Control should be a readiness issue not threshold and that establishment of a shorter deadline for site control projects that would enable an early disencumbrance of funds.

Response: No change is proposed in response to this comment. This is required pursuant 8303 of the Uniform Multifamily Regulations.

Section 8212(a)(7)

Comment: Commenter number 6 recommends that HCD replace this section with the parallel section from the Uniform Multifamily Regulations.

Response: No change is proposed in response to this comment.

Discussion: HCD's intent is identified in the ISOR of Section 8304c of the Uniform Multifamily Regulations. Section 8304c of the Uniform Multifamily Regulations requires the number of assisted units to equal the number of restricted units to the extent allowed by the requirements of Article XXXIV of the State Constitution. It is identical to a provision in the existing MHP regulations, and applies only to MHP because only MHP funds units other than assisted units.

Section 8212 (b)(1) and (c)

Comment: Commenter number 4 recommends that HCD consider the past performance of a jurisdiction in meeting the housing goals identified in their Housing Elements.

Response: HCD has made no change to section 8212 (b)(1) in response to this comment. Section 8212(c)(1)(B) and 8212(d)(1)(B) has also been revised to local programs and projects when we measure capacity or the prior experience of an applicant measured by implementation or development of HOME, CDBG and/or other local, State or federal affordable housing or community development programs or projects during the most recent seven year period...

Discussion: HCD currently is emphasizing the need for readiness, community need and successful implementations of housing programs. Section 8212(c)(1)(B) has been revised to measure capacity or the prior experience of an applicant measured by implementation of "local" community development programs as well as HOME, state or federal programs. The Department may consider addressing the performance of a jurisdiction in meeting housing goals through their state objective points or through provisions of allowing higher funding limits. Please note that endorsed state objectives,

if any, must be defined in the Departments Annual Action Plan of the State's Five- Year Consolidated Plan and will be specified in the NOFA.

Section 8212(c)(1)(A) (d)(1)(A) & 8217(a)(5)

Comment: **Commenter number 8** opposes the concept of negative points for prior performance and states that this section has insufficient detail in subcategories to distinguish between sub- categories to determine difference between major versus minor performance issues. **Commenter numbers 1, 3, and 6** requests that HCD clarify the meaning of “all requirements” as well as what constitutes “previous State HOME contracts,” specify a time frame to be reviewed and specify what will be defined in NOFA. **Commenter number 1** would like a letter or something specify what the status of the contracts performance, so they will know when they will have a clean slate. **Commenter number 6** opposes the punitive approach to lack of performance as an effective tool for getting funds expended in a more timely fashion. In addition, they believe it is ironic to begin every milestone date at the same time for all grantees, regardless of when the contract is executed and HCD should recognize that varying housing projects and programs move at different paces.

Commenters: **1, 3, 6, and 8**

Response: This section is being revised to clarify that 1) the rating requirements are those specified in this section, 2) that the contracts to be reviewed for expenditure milestones and submission of reports will be specified in the NOFA, and 3) that the monitoring issues reviewed are those that were identified by the Department in the last 5 years.

Discussion: HCD's supports the negative points as a method to provide full points to encourage new applicants and as an incentive for contractors to plan their programs and ensure timely expenditures (refer to ISOR). Details for all categories and subcategories will be outlined in the NOFA. There have been clarifying revisions to many of the sections throughout 8212. In this section as noted above, HCD made revisions to remove the reference to “all requirements” and define the specific requirements, contracts and or time frames we intend to review for performance. The Department frequently provides information regarding the status of the contracts being reviewed after the NOFA's release and prior to the application due date. HCD will review our current notification procedures for improvement or more frequent notification. HCD has extended the program contract period from 24 months to 30 months to accommodate the delays in the execution of the Standard Agreement. However, it is necessary to set consistent dates for all contractors, to facilitate HCD's milestone monitoring. HCD does “recognize that varying housing projects and programs move at different paces”; however, encourages applicants to plan when and if they should be applying for additional program funds to accommodate the pace at which their program is administered.

Sections 8212(c)(1)(B) and 8212(d)(1)(B) – Please refer to comment on Sections 8212(b)(1) and (c)

Section 8212(c)(1)(C)

Comment: **Commenter number 6** supports deletion of this section

Response: Thank you for your support.

Section 8212(c)(2) & (d)(2)

Comment: **Commenters 3 and 6** suggested that the community need factors and the specific basis for evaluation should be specified in NOFA. The commenters request that for data not readily available through the census, the department should clarify where the data will come from and who will be responsible for obtaining the data. They are concerned about how the ratio between the median home sales price and median household income will be available, noted as an example.

Response: This section is being revised to state that “the community need factors that apply to each activity, the source of the information and who will be required to provide the information will be identified in the NOFA.

Discussion: Please refer to the ISOR for examples of how these indicators will be used. Many of the factors are found in the Census or the Housing Elements. Surveys or feasibility studies may be allowed for outdated Census or Housing Element factors. Statistics on At risk housing projects are currently gathered by the Housing Partnership Corporation. The responsible party for providing the need factors will be detailed in the NOFA.

8212(c)(3)(A)

Comment: The number of units sold in a city or county for no more than the 203(b) limits, may be difficult to obtain and will be open to interpretation. **Commenter number 8** would like clarification of the requirement for demonstrating feasibility of a program to be demonstrated by the number of units sold in the city or county. They can make arguments that the program is feasible when a high percentage is sold and when a low percentage is sold.(Required for Demonstrating Feasibility).

Commenter numbers: **3, 6 and 8**

Response: This section is being revised to state that for FTHB programs, the number of homes which have sold over preceding 12 months at a price which is affordable, given the proposed HOME assistance, to lower income families.

Discussion: HCD agrees that the data may be used both in support and against the applicant and that the 203(b) limits may not be a clear identifier.

8212(c)(3)(C)

Comment: **Commenter number 1** requests that HCD allow Activity Delivery for Tenant Based Rental Assistance (TBRA).

Response: This comment is outside the scope of the proposed amendments to the HOME regulations. No change is proposed in response to this comment.

Discussion: The use of HOME funds on activity delivery for a TBRA program is not permitted pursuant 24 CFR 92.209(a) and 92.207(a).

Sections 8212(d)(1)(B) – Please refer to comment on Sections 8212 (b)(1) and (c)

8212(d) (3)

Comment: **Commenter numbers 3 and 6** specifies that they have reviewed the data reported by the Department of Finance (DOF) and found it inadequate for determining the feasibility of a project, as demonstrated by a per unit construction cost that is within 10 percent of the average unit construction cost in a jurisdiction.

Response: This section has been revised to delete the rating based on the per unit construction costs being within 10% average unit construction costs as reported by DOF and deleting it as a benchmark when determining points based on the greatest number of HOME assisted units. HOME is also revising this section to look at the greatest “percent” of HOME assisted units instead of “number”.

Discussion: HCD along with TCAC and CDLAC are in discussions to determine a methodology to measure reasonable construction costs in conformance with the Departments Uniform Multifamily Regulations.

Section 8212(d)(4)

Comment: **Commenter numbers 3 and 6** requests HCD to delineate the specific basis upon which points will be awarded for readiness during the NOFA process.

Response: This section is being revised to indicate that the weight of the scores for the specific subcategories will be identified in the NOFA.

Section 8212(d)(4)

Comment: **Commenter number 6** recommends that site control be added as a criterion for readiness rather than as a threshold item.

Response: No change is proposed in response to this comment. This is required pursuant 8303 of the Uniform Multifamily Regulations.

Discussion: The site control at time of application is required by section 8303 of the UMRs.

Section 8213

Comment: **Commenter number 2** disagrees with changing the rating and ranking bonus points – the proposed changes will not help anyone.

Response: No change is proposed in response to this comment.

Discussion: HCD has moved the section on bonus points to 8212(b). Please refer to the ISOR for discussion on the HCD changes to the rating and ranking factors. HCD supports the requirement that an applicant must receive a certain number of points before being eligible for additional bonus points and changes to the factors identified in the ISOR for 8212.

Section 8214(a)(4)(E)

Comment: **Commenter number 2** is concerned that we are again addressing “expenditure milestone” language and disagrees with HCD punishing jurisdictions for something that may be beyond their control.

Response: There is no change to this section in response to this comment. Section 8217 is being revised to include subsection (d) which provides an exception to project deadlines and program milestones when the violation is clearly outside the contractor’s control.

Discussion: This section of the regulations details required language in the Standard Agreement, although, the department prefers to not duplicate information in different sections of the regulations; it is necessary at times to restate requirements when specifying document requirements like the application and standard agreement for clarity purposes. Deadlines and expenditure requirements are set by the Department to encourage compliance, so the State can comply with HUD requirements; however, we are sensitive to the fact that at times violations do occur due to circumstances clearly outside the control of the contractor so we have included the new section 8217(d) in response to this and other comments.

Section 8217

Comment: **Commenter numbers 3 and 6** suggest HCD remove the word “project” from the heading for this subject section in portions of 8217 that apply to programs. It is confusing to list definitions of “program and project” in section 8217, rather than with other definitions in section 8201.

Response: This section's heading is being revised to read "Deadlines and Expenditure milestones". Section 8217(c) is being revised to contain a header "Program Milestones".

Section 8217

Comment: **Commenter number 6** believes that it is confusing to list definitions of "program and project" in section 8217, rather than with other definitions in section 8201.

Response: No change is being made to this section in response to this comment.

Discussion: These definitions have been listed in this section to ensure the clarity of the requirements identified in 8217. Some of the definitions like "program" and "project" have multiple meanings in other areas of the regulations. HCD does agree that is advantageous to keep definitions in one area, and we will in the next regulatory proposal readdress this issue.

Section 8217(a)(6)

Comment: **Commenter number 6** is concerned that the definition of project prohibits substitution of the site.

Response: No change is proposed in response to this comment.

Discussion: Site control defines the initial readiness of the project and is therefore a threshold factor; substitution would allow delays and an inability to meet deadlines or complete the project. It is a long-standing HCD policy for all programs that a change in site is a fundamental change from the original application and is not permitted.

Section 8217 (b)

Comment: **Commenter number 1** requests that if HCD is going to be strict with deadlines, HOME needs to be strict with itself in processing contracts, and responses to special conditions. **Commenter number 8** comments that project deadlines are too rigid and some mechanism needs to be developed to provide flexibility. **Commenter number 2** disagrees with the submission deadline of setups 60 days prior to setup deadlines and performance penalties. **Commenter numbers 3 and 6** believes the setup deadline should remain 18 months, the construction loan closing deadline should remain at 24 months and the self-help project loan closings should remain at 30 months, and the finance deadline should remain at 18 months and the financing deadline for tax credit projects should remaining 17 months for tax credit

Commenters: 1, 2, 3, 6 and 8

Response: No change is proposed in response to these comments. Please refer to the ISOR for Section 8217 and comment on disencumbering funds in Section 8217(b)(1)(d).

Discussion: The Department's primary reason for the new schedules in milestones and project deadlines is to increase the State's expenditure rate. The State is the 50th slowest spending state and must increase its expenditure rate. This and other research that has been completed is outlined in the ISOR for section 8217. HCD is aware that there are delays in the execution of the Standard Agreements. We have a 90 day provision for programs that if the contracts are not processed in time that milestones will be extended in section 8217(c)(1)(A)(iii). We have also extended the proposed contract period for programs from 24 months to 30 months to accommodate the delay in execution of contracts. We have not added the same provisions for projects as they can continue to proceed in expectation of their lending commitments. The Department's experience is that 60 days is minimum necessary to process the set-up documentation and the other projects deadlines are adequate for the reasons stated in the ISOR under Section 8217(b). Please note: that the Department is rescinding language requiring disencumberance of contracts in the event that a milestone is missed, please refer to comment below on 8217(b)(1)(D).

HCD's has federal and state requirements to meet thus our intent for deadlines, milestones, other performance rating is to provide incentive for jurisdictions to plan their activities so that they are successful and demonstrate they have the capacity to manage these funds and that as partners we can meet the goals set by HUD and the State. HCD's ratings on meeting HUD's commitment and expenditure requirements may be viewed at <http://www.hud.gov/offices/cpd/affordablehousing/programs/home/snapshot/1q04/index>.

Section 8217(b)(1)(D)

Comment: Commenter numbers 3 and 6 comment that the threat to disencumber funds associated with the project if the completion deadline is not met is an unacceptable remedy to a missed deadline.

Response: This section is being revised to rescind the requirement for the disencumberance of funds whenever any deadline is missed. This section is being revised to replace the disencumberance of funds with a performance penalty for the missing of any one deadline and for 3 missed deadlines the applicant will not be allowed to apply for additional home funds for a new project until the project with the missed deadlines is complete, a notice of completion has been filed, occupancy is obtained and all expenditures have been made and all necessary HOME funds have been drawn. We have also adopted a new subsection 8217(d) in response to this comment to allow for an exception to be requested for the project and program penalties in this section. At the Department's sole discretion exceptions will be approved when it is determined the violation was clearly outside of the control of the Contractor. Note: that "outside the control of a Contractor" is intended for exceptional circumstances such as delays due to

natural or man made disasters). For a program, if the final milestone is missed due to there being insufficient funds left in the contract to assist another homeowner this may be considered outside the control of the Contractor. Please refer to Section 8217(d).

Discussion: HCD has reconsidered the requirement for disencumbrance of funds as a consequence for a missed deadline. HCD believes that it is essential to meet the deadlines set forth by the program to ensure a timely expenditure of funds as stated above in the response to Section 8217(b) and identified in the ISOR. HCD however, also agrees that the return of the funds will just further delay the expenditure of those funds and may result in a loss of the affordable units that will result from the project. HCD cautions contractors that whenever the delay appears that it will result in the incompleteness of a project that the determination is made at the earliest possible point, so that the funds may be returned and be allocated in the next NOFA. The exception allowed under Section 8217(d) will not apply to Subsection 8217(b)(3)(A) the restriction on applying for new HOME funds until the project is complete. HCD believes it is imperative that when there is a delay that the contractor concentrates their resources only on the completion of that project and will not provide additional funds until it is accomplished.

Section 8217(c)(1)

Commenter number 8 is concerned that the fast-track milestone schedule is too difficult to comply with especially in self-help projects. If CHDO's don't perform according to the proposed requirements CHDO's will be penalized in future applications, thus providing a disincentive for CHDOs to participate in the HOME program.

Response: No change is proposed in response to this comment. This is an option for program activities and not utilized in projects.

Discussion: The fast-track milestone is a voluntary schedule that applies to housing programs, not housing projects such as self-help housing new construction. Projects are subject to the different deadlines in Section 8217 (b)(1). The fast-track milestone schedule will have no competitive effect for CHDOs proposing self-help housing projects.

Section 8217(c)(2)-(4)

Commenter number 6 recommends that HCD reduce grant period from 39 months to 30 months with milestones at the 15th and 24th month requiring 20%, 50% and 95% expenditures.

Response: This section is being revised to increase the grant period to 30 months with milestones due at the 12th and 18th month requiring 20%, 50% and 95% for the final.

Discussion: HCD agrees to increase the proposed 24 months to 30 months to acknowledge the delays in execution of the Standard Agreements. HCD believes the timing of the currently proposed milestones at the 12th and 18th month are reasonable goals; however, is lowering the 18 month to an attainable 50%. HCD encourages their contractors to plan and obtain their expenditures early the contract term.

Section 8217(c)(2)-(4)

Commenter number 6: Allow for the Expenditure of Program Income when calculating disbursements, if the program income is spent on identical activities in currently open State Standard agreements.

Response: Section 8217(c)(1) is being revised to indicate that reported Program Income expenditures for the same activity will be used in the calculation of disbursements in determining if the milestones are met except for the final milestone.

Discussion: HCD is providing some flexibility in this area as it is difficult to plan when program income will be received. State Recipients are still requested to set their goals so that they can accommodate the expenditure of their grant funds and any program income they may receive before the final milestone.

Section 8217(c)(2)(4)(E)

Commenter number 6 recommends that HCD do not retain both loss of performance points and reduction in funding as performance penalties. The combination is overkill. Replace one with the other, but do not impose double jeopardy for missed milestones.

Response: These sections are being revised to rescind the language proposed that provided for reduction in funding for missed milestones. Section 8217c(4) has been proposed to allow for up to 50% over the funding limits specified in the NOFA for applicants that are in compliance with their contracts and reasons specified in the NOFA. Section 8212(4) was updated to include that funding limits in the NOFA that may not be exceeded will include any allowed increase pursuant to Section 8217.

Discussion: HCD's intent is to focus money in hands of those that can spend the funds more quickly. A second goal was to provide a mechanism so that when Cities/Counties are forced by Political Authorities to apply for the maximum amount available, we would have the ability to set the grant amount at more reasonable expectation of what the jurisdiction can spend based on their past performance. It is not our intent to create a situation where HCD is providing penalties for the sake of penalties, so we have eliminated the requirement for a reduction in funding. However, HCD has set milestones as a planning tool, but once set they will be used as a guide for determining Capacity. Since HCD is interested in funds being expended more quickly, we have revised the requirement to allow Cities and Counties to receive an increase to the funding limits for applicants that meet the criteria specified in the NOFA. This still

allows Cities and Counties with the capacity to receive larger awards while eliminating the appearance of other applicants receiving a double penalty.

Section 8217(d)

Comment: Add an exception, to missed project deadlines and/or milestones.

Response: HCD is revising 8217 to add a new subsection 8217(d) to allow for an exception to the project and program penalties. An exception must be submitted in writing and will be approved at the Department's sole discretion when it is determined that violation was clearly outside of the control of the Contractor. This provision will not apply to Section 8217(b)(3)(A).

Discussion: Outside the control of a Contractor is intended for exceptional circumstances such as delays due to natural or man made disasters. For a program, if the final milestone is missed due to there being insufficient funds left in the contract to assist another homeowner this may be considered outside the control of the Contractor. This revision is a result of comments and changes on Sections 8214, 8217, and 8217(b)(1)(D), please refer to those sections. The provision does not apply to 8217(b)(3)(B) because even if the delay is outside the control of the contractor, HCD believes it is essential for the Contractor to concentrate all their resources on the completion of the project, before applying to HCD for funding of a new project.

Other Comments (not linked to regulations)

The Department appreciates the many other comments that were submitted relating to policies, procedures and practices that are not regulatory in nature and wants to assure the commenters that each comment is being reviewed and considered in our ongoing efforts to continually improve the delivery of the HOME Investment Partnerships Program.